IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 4729 to 4764 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER - Appellant(s)
Versus
PATEL BHAICHANDBHAI AMBARAM - Defendant(s)

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Appearance :
Mr.S.S.Shah, learned GP for appellants in First Appeal Nos.4729 to 4744 of 2006. Mr.K.D.Pandya, learned AGP for appellants in First Appeal Nos.4745 to 4754 of 2006. Ms.Krina P.Calla,learned AGP for appellants in First Appeal Nos.4755 to 4759 of 2006. Ms.Tanuja N.Kachchhi,learned AGP for Appellants in First Appeal Nos.4760 to 4764 of 2006.
MR BS PATEL for claimant/claimants

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 07/12/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.B.S.Patel, learned counsel, waives service of notice on behalf of the claimant/claimants in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. These appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated March 31,2004, rendered by the learned 4th Joint Civil Judge (SD), Mehsana in Land Acquisition Reference Nos.3145 to 3182 of 2003 by which the claimants have been awarded additional amount of compensation at the rate of Rs.33.50 Ps.per sq.mt, for their acquired

lands, over and above the compensation paid to them by the Special Land Acquisition Officer at the rate of Rs.10/- per sq.mt. by his award dated November 16,1998.

3. A proposal was received by the State Government to acquire the lands of village Kansa, Taluka Vijapur, District Mehsana for the public purpose of construction of canal under Dharoi Project. On perusal of the said proposal, the State Government was satisfied that the lands of village Kansa were likely to be needed for the said public purpose. Therefore, a Notification under Section 4 of the Act was issued, which was published in the Official Gazette on October 23, 1996. The land owners were thereafter served with notices under Section 4(1) of the Act. On receipt of the notices, they objected to the proposed acquisition. After considering their objections,a report under Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of village Kansa specified in the notification

published under Section 4 (1) of the Act were needed for the public purpose of construction of canal under Dharoi Project. Therefore, a declaration under Section 6 of the Act was made which was also published in the Official Gazette. The interested persons were thereafter served with the notices under Section 9 of the Act for determination of the compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated November 16,1998 offered compensation to them at the rate of Rs.10/- per sq.mt. The claimants were of the view that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Mehsana, which were registered as

Land Acquisition Reference Nos.3145 to 3182 of 2003.

4. On behalf of the claimants, witness Joitarambhai Revabhai Patel was examined at Exh.12. The witness mentioned in his testimony that the lands acquired were highly fertile and each claimant was able to raise three crops in a year and that each claimant was earning substantial amount from the sale of agricultural produces. According to the said witness, the lands acquired had also potential value inasmuch as quite nearby the acquired lands, factories were situated. The witness produced previous award of the Reference Court relating to the lands of this very village at Exh.19 and claimed that enhanced compensation should be paid to the claimants on the basis of the said previous award. The witness further produced copy of judgment of High Court dated August 8,2003 rendered in First Appeal No.1130 of 2003, which indicated that the previous award of the Reference Court relating to the lands of this very village was confirmed by the High Court. The witness further claimed that the lands, which were previously acquired from this village, were similar to the lands

acquired in the instant case.

5. Though this witness was cross examined at length on behalf of the appellants nothing substantial could be elicited. The assertion made by the witness that the lands, which were acquired previously, were similar in all respects to the lands acquired in the instant case could not be demonstrated to be untrue.

6. On behalf of the appellants, witness Rameshchand Amarsing Thakkar was examined at Exh.16. According to this witness before determining the amount of compensation payable to the claimants, the Special Land Acquisition Officer had taken into consideration all the relevant factors required by law and, therefore, the claimants were not entitled to additional amount of compensation claimed by them. The witness for the appellants produced Index showing the sale instances of the lands of this village at Exh.23 and claimed that the claimants were not entitled to enhanced compensation.

7. On appreciation of evidence adduced by the

parties, the Reference Court deduced that the previous award of the Reference Court relating to the lands of this very village was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. After placing reliance on the said award, the Reference Court has awarded additional amount of compensation at the rate of Rs.33.50 Ps. per sq.mt. to the claimants by the impugned award, giving rise to these appeal.

8. This Court has heard Mr.S.S.Shah, learned GP with Mr.K.D.Pandya, learned AGP for the appellants and Mr.B.S.Patel, learned counsel for the claimants at length and in great detail. This Court has also considered the documents produced by the learned counsels for the parties for perusal of the Court. From the record of the case it is evident that enhanced compensation was never claimed by the claimants on the basis of yield nor on the basis of comparable sale instances. What was relied upon by the claimants was the previous award of the Reference Court relating to the lands of this very village

which was produced at Exh.19. A perusal of Exh.19 makes it clear that the lands of this very village were acquired for the public purpose of construction of Canal under Dharoi Project pursuant to publication of Notification in the Official Gazette on June 4, 1987. Against the award made by the Special Land Acquisition Officer, the claimants therein had sought reference and accordingly reference was made to the District Court, Mehsana, which was registered as Land Acquisition Reference No.298 of 1986. The Reference Court on appreciation of evidence awarded compensation to the claimant at the rate of Rs.11.50 Ps. per sq.mt. Feeling aggrieved, the claimant preferred First Appeal No.520 of 1989 and the High Court awarded further additional amount of compensation at the rate of Rs.6/- per sq.mt. Thus, the claimant, whose lands were acquired under the previous award from this village, was awarded compensation at the rate of Rs.17.50 Ps.per sq.mt. It may be mentioned that the claimants produced a simple copy of the judgment of the High Court rendered in First Appeal No.520 of 1980 at Exh.20. A perusal of Exh.20 makes it very clear that the award rendered by

the Reference Court in Land Acquisition Reference No.298 of 1986 was modified at the instance of the claimant and claimant was awarded further additional amount of compensation at the rate of Rs.6/- per sq.mt. The record does not indicate that the judgment of the High Court was challenged by the acquiring authorities before the higher forum or that it was modified in any manner. It is well settled that previous award of the Reference Court relating to a village can be treated as a good piece of evidence and can be relied upon for the purpose of determining market value of similar lands subsequently acquired from the same village. On the facts and in the circumstances of the case, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of this very village as modified by the High Court for the purpose of determining the market value of the lands acquired in the instant case. As observed earlier, for acquiring the lands from this village previously, the notification under Section 4(1) of the Act was published in the Official Gazette on June

4,1987 whereas in the instant case the Notification under Section 4(1) of the Act was published in the Official Gazette on October 23,1996 and in view of time gap between the two notifications, the claimants would naturally be entitled to reasonable rise in price of the lands at the rate of 10% per annum. Therefore, the Reference Court did not commit any error in granting benefit of rise in price of lands to the claimants at the rate of 10% per annum. On re-appreciation of evidence adduced by the parties before the Reference Court, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court to which settled propositions of law have been applied. The calculation of the additional amount of compensation payable to the claimants could not be demonstrated to be erroneous. The learned counsels for the appellants could not persuade the Court to take a view different than the one taken by the Reference Court on appreciation of evidence. Therefore, the appeals, which lack merits, deserve to be dismissed.

9. For the foregoing reasons all the appeals fail

and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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